No. 173.

Supreme Court of the United States.

THE IRON-CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN.

PLAINTIFFS IN ERROR.

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Supplemental and Answering Brief for Plaintiffs in Error.

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Of Counsel.

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Certain criticisms and various new propositions and authorities advanced by defendants in error in their reply brief constitute our reason for filing herewith a short answer.

I.

Defendants in error criticize the clause found on page 7 of plaintiff's original brief, where an intended statement of the substance and effect of the answer of William G. Mather, (Record, pages 51 and 52), was by mistake of the printer put in quotation marks as though an exact quotation of the

words of such answer were being made. The statement was not intended by us as a quotation; but *the substance and real meaning of this answer, however, and its manifest intent is correctly stated.*

The record shows that ten shares of *the stock* of the Pioneer Iron Company belonged to William G. Mather personally and stood in his name; and that 3930 shares belonged to the Iron Cliffs Company, — and stood in the name of William G. Mather, *as trustee.* The exact proportions in which this stock was so owned had been proven, and the Court knew the facts.

The contention by the defendants in error that the protection of the federal constitution, and the 14th amendment of the same, was not explicitly invoked and claimed in behalf of the owners of *all the stock* so held by Mr. Mather, both for himself and the Iron Cliffs Company, is not supported either by the facts or the holdings of this Court.

It cannot be important as to *the method adopted to raise and assert this question* in behalf of these two stockholders, who were the only stockholders of the Pioneer Iron Company who were made parties, since the state Courts were explicitly advised that the same was so raised. Again the claim was also asserted for them by counsel in argument and in brief filed in their behalf, which alone would have been sufficient according to the cases cited in our original brief. How could the right be claimed and pleaded and set up more strongly for the Iron Cliffs Company than by the trustee holding in his own name these shares of stock?

> "Although no particular form of words is necessary to be used in order that the federal question may be considered to be invoked within the meaning of the cases on this subject, *there yet must be*

something in the case before the state court which would at least call its attention to the federal question as one that was relied on by the party." etc., etc.

Bridge Co. v. Illinois, 175 U. S., see opinion 634.

The claim made by the defendants, (reply brief, page 4), that the opinions filed do not show that the constitutional question now asserted was considered and passed on by the Michigan Courts, — must be found incorrect when the facts shown by the record are examined, and when such opinions are read in the light of the pleadings. The Circuit Court of Marquette County, after the evidence was closed, expressly permitted the answer to be amended for the very purpose of setting up and claiming this federal question in exact and explicit form (Record, page 52). This pleading could not have been overlooked or disregarded. The argument of counsel for defendants below could not have been ignored. The exact federal question here raised was thus before the state Courts, and, in justice, required consideration and decision. The opinions of both the state Courts contained in unmistakable terms their determination of this question, and they show that the right was claimed for the "*defendants.*"

The decisions of this Court cited (reply brief, page 4) were rendered in cases where it could not be certainly determined what federal questions,if any,were presented,or whether the same were raised in the state Courts and considered there. Such decisions, therefore, have no bearing here, where the constitutional right relied on had been raised in most explicit and technical form.

II.

Corporate existence of Pioneer Iron Company and legality of reorganization not considered by state courts.

The Courts of Michigan did not find or determine that the Pioneer Iron Company "was dead," or had ceased to exist, or that the corporation, as extended by reorganization under the statute, was not a regular live and going concern.

Defendants below asserted that the Pioneer Iron Company, as reorganized under the Michigan law, continued to own the 99 year lease; and they introduced in full the official record of such organization. Complainants raised technical objection to the regularity and also to the legality of the reorganization; but these contentions of complainants were expressly left undecided by the Michigan Courts. The Supreme Court of Michigan say (Record, page 576):

> "Very important questions are raised by counsel as to the effect of this reorganization statute, the validity of the act of reorganization by the Pioneer Iron Company, as to whether the Pioneer Iron Company was in position to avail itself of this statute, and also the effect upon the 99 year lease, should the reorganization he held valid. Inasmuch, however, as these questions are not essential to a decision of the case, we refrain from determining them."

The reorganization and the corporate character of the Pioneer Iron Company was thus intentionally left undisturbed and unaffected with all the rights given and recognized by the State of Michigan. Indeed, the questions at-

tempted to be raised were of a character to be set up only at the instance of the state itself.

We here repeat that there was no dispute as to the acts done and steps taken for the purpose of reorganizing and continuing the existence of the Pioneer Iron Company under the statute and law of Michigan. The contention was confined to *the legal effect* of these acts. There could be no dispute that the State of Michigan permitted and continued to recognize the corporate existence of the Pioneer Iron Company under its reorganization. The authorities therefore cited by defendants in error (reply brief, pages 15 to 17), relative to corporations which had gone out of existence, can have no application or bearing upon the questions here to be considered.

It is claimed, however, that the Supreme Court of Michigan found that the Pioneer Iron Company was used as a "dummy." That Court in its opinion did state that "under the allegations of the bill and as well under the proofs the Pioneer Iron Company *is used* as a dummy for the benefit of the defendant companies." The Supreme Court was careless in its statements as to the ownership of the stock of the Pioneer Iron Company. The stock of the company was not and is not all owned by defendants below. The Record shows, (Page 531) that the following persons, not parties to this suit, — were stockholders:

E. V. Hale,	holding	950 shares.
George A. Garretson,	holding	50 shares
Peter White,	holding	10 shares
E. R. Perkins	holding	10 shares
Fred A. Morse,	holding	10 shares
J. H. Sheadle,	holding	10 shares
James H. Hoyt,	holding	10 shares
J. H. McBride,	holding	10 shares

Most of these stockholders were not connected in interest with the Iron Cliffs Company.

That said Court did not intend by its language above quoted to pass upon the corporate existence or reorganization of the Pioneer Iron Company is evident from the express statement of that Court hereinbefore set forth.

It will be noted that the above language of the Court occurs in a discussion of the claim urged as "*a fatal objection to the maintenance of the bill,*" —that the Pioneer Iron Company was not made a party to the suit, (Record, page 569). The Court was leading to and it reached the conclusion that said corporation might be *bound by the decree* under the doctrine of "representation." We know this from the authorities cited,

15 *Enc. of Pl. & Pr.*, page 627;
Hale v. Hale, 146 Ill., 277.

Upon this exact question this Court has heretofore passed. Even in case a corporation *has suspended all business*, and even though the stockholders are all before the Court, this Court has decided that no judgment could be rendered affecting corporate property rights without the presence in Court of such corporation as a party to the suit.

Land & Cattle Co. v. Frank, 148 U. S. 603, see opinion 610.

If in stating that the Pioneer Iron Company "was *used* as a dummy," — the Court did more than to set forth the claims of complainants, — and if it decided *a fact*, as a basis for the judgment declaring the ninety-nine year lease terminated and lost and for the perpetual injunction complained of, — then such finding was but one of the steps which we complain of as unwarranted and in violation of our con-

stitutional right. The Pioneer Iron Company had the right to be heard on this, as upon all questions which might affect its continued rights under this lease.

The *real claims made* and pressed by complainants below, and in fact decided by the Michigan Courts *were not of a collateral character, simply in criticism* of the acts of the state in incorporating this company, but *they struck directly at the continued existence of the ninety-nine year lease as a property right of the Pioneer Iron Company, and at the privilege which was granted to it to mine thereunder.* The opinions of both Courts as well as the decree clearly show this.

Our claim is, that the lease itself, having been granted for ninety-nine years, it could not be presumed or found, in absence of the Pioneer Iron Company as a party, that such property was intended to last but thirty years. The Pioneer Iron Company as re-organized and thus extended under express law was by statute authorized to retain its property; even under the general decisions, this reorganized corporation *was the successor,* taking the place which the original corporation left, and succeeding to the rights of such original company,

Webster's Dictionary;
Clark & Marshall on Corporations, Secs. 335-341;
Railway Co. v. Miller, 114 U. S., 176, 187;
Railway Co. v. Pendleton, 166 U. S., 669, 673;
Turnpike Co. v. Sanford, 164 U. S. 587, see opinion.

Under this lease which expressly *descended to successors* of the Pioneer Iron Company, the reorganized corporation was certainly invested with apparent property rights which could not be taken in its absence as a party to the suit.

III.

The decree which was affirmed

The decree of the Circuit Court which was by the Supreme Court of Michigan "in all things affirmed." Record, page 577, and which stands as the judgment of the Michigan Courts was carefully and studiously prepared. It was separate and distinct from the opinion of the Circuit Court. This decree begins on Record page 556. It is entitled "Decree." After the formal parts, it begins with the following language: "*And the Court, having duly considered the same, and being "advised in the premises, doth find, order, adjudge and decree "as follows.*"

Said decree thereupon proceeds to find and adjudge the facts governing the rights of the parties, all of which, together with the final paragraph entering perpetual injunction, constitute the judgment complained of in the petition in error here.

It is the foregoing "decree" which was "in all things affirmed." It is the final injunction based upon the "foregoing findings and determinations of the Court," — that conclusively and perpetually terminates the property rights of the Pioneer Iron Company.

The claims found in reply brief, pages 12 and 13, that in perpetually enjoining defendants in their "individual or *representative capacity*" the Court did not refer to them as representatives of the Pioneer Iron Company, but only referred

tc them as representatives of The Cleveland-Cliffs Iron Company and the Iron Cliffs Company, finds no support in the decree itself; for, when it is considered that these defendant companies, The Cleveland-Cliffs Iron Company and the Iron Cliffs Company, together with their counselors, attorneys, solicitors and agents were *themselves* perpetually enjoined, it is plain that no further terms were necessary to bind them. The words "*representative capacity*" could have had meaning and force only when applied to the capacity in which defendants claimed to act in mining upon the lands in question, — namely, as representatives of the Pioneer Iron Company.

When the terms "representative capacity" are considered in connection with the "*foregoing findings and determinations of the Court*" as to the rights of the Pioneer Iron Company in the ninety-nine year lease, and when it is observed that this language is not restricted by context or otherwise, the effect of the same and the purpose of using these words, together with the uses and application which can and will be made of this entire decree need no further illustration or argument.

Respectfully submitted.

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